DENNIS L. LATTERY

IBLA 79-433 Decided January 31, 1980

Appeal from a determination by the Townsite Trustee, Alaska, Bureau of Land Management, that appellant is ineligible to enter townsite lot after October 21, 1976.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Generally -- Federal Land Policy and Management Act of 1976: Repealers -- Townsites

   The townsite laws were repealed by sec. 703 of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2790, and the initiation of occupancy of a claim pursuant to any of the repealed laws after the effective date of FLPMA, Oct. 21, 1976, does not constitute a valid existing right which would survive FLPMA.

2. Estoppel -- Federal Employees and Officers: Authority to Bind Government

   The general rule is that reliance on erroneous or incomplete information provided by Federal employees cannot create any rights not authorized by law.

APPEARANCES: Dennis L. Lattery, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

A review of the sequence of events in this case will establish the pertinent facts.

Appellant has furnished a copy of a one-page, typewritten document headed Unsubdivided Townsite Lands which states the lands in some

townsites which are available, and the requirements for staking, improving, surveying, costs, etc., which will qualify an entrant to receive title. This document on its face bears no clue as to its origin and is unsigned, but for the purpose of this appeal we will assume that it was supplied by the Alaska Townsite Trustee under the auspices of the Bureau of Land Management. The document is dated June 14, 1977.

On June 17, 1977, Dennis L. Lattery wrote to the Trustee informing him that he was claiming a 200 foot x 200 foot lot in the Nondalton Townsite, describing how he had staked the corners, and advising that he would improve the land with a cabin, as required by law, "as soon as possible."

On February 27, 1978, Lattery again wrote the Trustee to state that he was deferring the air lift of building materials and the commencement of construction pending the outcome of a "class action suit being brought against BLM and individuals filing on townsite land in Nondalton." This litigation is not otherwise identified. Lattery's letter also states, "it is now my intention to await the outcome of this proceeding before investing any money in the cabin project."

On March 2, 1978, the Trustee replied, stating his agreement with Lattery's decision and advising, "If the Trustee prevails and the suit is dismissed, you should then proceed with your building program."

On February 20, 1979, this Department's Regional Solicitor, Alaska, prepared a legal opinion concerning the effect of the repeal of the townsite laws by the enactment of the Federal Land Policy and Management Act (FLPMA) on October 21, 1976. The opinion concluded, in part:

> The October 21, 1976 repeal of the townsite laws was clearly of the latter type - to destroy rights in the future. Existing rights were expressly saved by Section 701(a) which provides in pertinent part:
>
> > "Nothing in this Act * * * shall be construed as terminating any * * * land use right * * * existing on the date of approval of this Act."
>
> The rights in existence on the date of repeal were the rights of individuals then in occupancy and the right of the municipality to any unoccupied lands. Persons not in occupancy on that date had no rights "existing on the date of approval of this Act." Therefore the repeal in effect closed all townsites to further entry.

When the Trustee received this opinion he wrote to Lattery, informed him of its content, and enclosed a copy for his own reference. After another exchange of correspondence between them to clarify the situation, Lattery filed this appeal.

Essentially, it is appellant's contention that he has a right to enter -- inferring that the Solicitor's opinion is in error -- but that even if the opinion be correct, the Board should find in his favor. He asserts that he acted in good faith on the basis of all available information, including that furnished by the Townsite Trustee. He states that he entered and staked the land on or about June 10, 1977. He says that he has incurred considerable hardship and expense in making three trips to the townsite by small aircraft and has "accumulated a considerable amount of otherwise useless building materials in anticipation of constructing a cabin on my site this spring."

[1] In our recent resolution of an appeal involving almost identical circumstances and issues, Royal Harris, 45 IBLA 87 (1979), we said:

> [T]his statute, as well as the other townsite laws, was repealed by section 703 of FLPMA, 90 Stat. 2790. The question then becomes whether appellant has a valid existing right under section 701 of FLPMA, which provides that nothing in the Act shall be construed as terminating any patent, or other land use right or authorization existing on the date of approval of the Act (Oct. 21, 1976). The events giving rise to this appeal postdate the effective date of the Act. Therefore, on October 21, 1976, appellant could have had no valid existing right which would survive FLPMA. Stu Mach, 43 IBLA 306 (1979). When appellant wrote to BLM on May 9, 1977, he had only a hope or expectancy. However, use or occupancy of the public land granted subsequent to the effective date of FLPMA must be under authority of that Act, 43 U.S.C. § 1732(b) (1976); William J. Colman, 40 IBLA 180 (1979), and the erroneous advice provided by BLM could create no rights not authorized by law. Belton E. Hall, 33 IBLA 349 (1978).

[2] In requesting relief on the ground that he has been damaged by acting in good faith in reliance upon the misrepresentations of law by the Trustee, appellant has effectively stated an assertion that BLM should be estopped from rejecting his claim to the townsite lot. This was also an issue in the Royal Harris appeal, although the extent of the damage was greater in that case because Harris had partially completed construction of a residence on the lot at issue, whereas this appellant apparently has not. Nevertheless, in Harris we were obliged to conclude:

> It is well settled law that the Department can alienate interests in land belonging to the United States only within the limits authorized by law. Union Oil Co. of California v. Morton, 512 F.2d 743, 748 (9th Cir. 1975).

William J. Elder and Stephen M. Owen, 56 Comp. Gen. 85, 89 (1976), illuminates the principle above as follows:

> There is no doubt that Federal employees, and ordinary citizens, are presumed to know the contents of the United States Code. Federal Crop Ins. Corp. v. Merrill, 332 U.S. 380 (1947).
>
> We believe the rule stated by the Supreme Court in Utah Power & Light Co. v. United States, 243 U.S. 389 (1917), is still correct:
>
> > * * * that the United States is neither bound nor estopped by acts of its officers or agents in entering into an arrangement or agreement to do or cause to be done what the law does not sanction or permit. (243 U.S. at 409)
>
> This position was restated and followed in Montilla v. United States, 457 F.2d 978 (Ct. Cl. 1972). In that case, the plaintiff was seeking retired pay for service in the Army Reserves. He contended that the Government was estopped to deny him benefits based upon insufficient years of service in the active reserves, because he had relied on statements and letters from Army officials stating, or at least inferring, that he had enough service in the active reserves. In holding that the statutory service requirements must be strictly fulfilled, the court stated that:
>
> > It is true that the government may be estopped by the acts and conduct of its agents where they are duly authorized and are acting within the scope of their authority and in accordance with the power vested in them, as, for instance, in certain cases involving contractual dealings with the government. But we know of no case where an officer or agent of the government, such as Colonel Powell of the Army in the case before us, has estopped the government from enforcing a law passed by Congress. Unless a law has been repealed or declared unconstitutional by the courts, it is a part of the supreme law of the land

> and no officer or agent can by his actions or conduct waive its provisions or nullify its enforcement. (457 F.2d at 986-987)

Although we are in sympathy with appellant's plight, as we were in the Harris case, there is no lawful authority under which his claim can be allowed. We observe, also, that his building materials are intact and may be sold or used by him to build a cabin elsewhere.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the matter appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

I concur:

Frederick Fishman
Administrative Judge

ADMINISTRATIVE JUDGE THOMPSON CONCURRING IN THE RESULT:

I joined with the dissenting opinion in Royal Harris, 45 IBLA 87, 93 (1979), on what effect the repeal of the townsite laws should be as to claimants who initiate their occupancy after the date of the repeal. I adhere to my position in that case. However, unless and until the majority of the Board's position in Harris is overturned, I am constrained to follow the majority's position that no rights can be created by occupancy within a townsite after the date of the repeal of the townsite laws. For this reason only do I join in affirming the decision below.

Joan B. Thompson
Administrative Judge